

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SAM NELIS,

Plaintiff,

Case No. 06-C-1220

v.

WARDEN PHIL KINGSTON, et al.,

Defendant.

ORDER

Pro se plaintiff Sam Nelis, has filed a motion for substitution of parties, a request for production of documents, a motion for an order for written deposition and a motion to appoint counsel in the above action. The motion to appoint counsel is the third such motion that Nelis has brought. The court has adequately addressed that motion in its previous orders and the situation has not changed. Accordingly, the motion to appoint counsel is denied. As indicated previously, the court will, on its own motion, revisit this issue should the circumstances change and the matter appear more complex.

The request for production of documents requires no action by the court. A request for production of documents is to be served on opposing counsel who must then respond within 30 days. *See* Fed. R. Civ. P. 34. Only if a dispute arises between the parties is court action required. Accordingly, no action will be taken with respect to Nelis' request for production.

The same is true for depositions. Once the scheduling order is entered, the parties are free to take depositions without leave of the court subject to the exceptions stated in Fed. R. Civ. P.

30(a)(2). None of the exceptions apply here, so Nellis is free, assuming he has the financial resources, to conduct depositions without leave of the court. The motion for an order of written deposition addressed to the court is therefore inappropriate and will be **DENIED**.

Lastly, Nelis' request that the new warden be substituted for Warden Kingston will be **DENIED**. Rule 25 authorizes substitution of parties where a public officer is sued in his official capacity and, after suit is commenced, someone else succeeds to the office. That is not the situation here. Nelis' official capacity claims were dismissed. He has sued Warden Kingston in his individual capacity allegedly for conduct that he personally undertook. Accordingly, Rule 25 does not apply and the motion for substitution of parties is therefore denied.

SO ORDERED this 6th day of June, 2007.

s/ William C. Griesbach
William C. Griesbach
United States District Judge